

C. Regulation of BOC International Services

MCI also generally agrees with the Commission that a BOC's in-region international service should be treated roughly in the same manner as its in-region domestic interLATA services.¹³⁷ Because of certain factors unique to the international market and BOCs' unique advantages in that market, however, the issue of foreign affiliation and other connections between BOCs and foreign carriers requires some additional refinement. BOC interLATA affiliates will be in a unique position to negotiate special arrangements with foreign carriers that would disadvantage other international interLATA carriers, irrespective of any corporate affiliation between the BOC and the foreign carrier.

For example, the BOCs' regional focus provides their affiliates the opportunity to negotiate special arrangements with foreign carriers by which return traffic would be "groomed" -- i.e., the foreign carrier would only give the affiliate the return traffic that terminates in the BOC's region. That would greatly reduce the affiliate's costs and give it a tremendous advantage over all other international carriers, such as MCI, which must take return traffic to destinations all over the country. The NYNEX and Pacific Bell interLATA affiliates would have an especially rich opportunity to "cherry pick" return traffic in this way, since a disproportionate amount of inbound

¹³⁷ See NPRM at ¶¶ 150-51.

international traffic terminates in their regions. Moreover, as traditional international regulatory regimes, such as the use of uniform accounting rates under the International Settlements Policy, give way to the use of such market-driven mechanisms as negotiated termination charges, foreign carriers will have greater freedom and incentives to agree to such special arrangements.

Similarly, BOC affiliates would be in a position to negotiate a variety of special arrangements with foreign carriers that would disadvantage international competition. A BOC affiliate might agree with a foreign carrier to accept return traffic at its switch in the foreign country, thus "bypassing" the usual rules governing international IMTS traffic, including accounting rates and proportionate return. Such arrangements are especially likely where the BOC has an interest in the foreign carrier.

In order to forestall such anticompetitive arrangements, the Commission should impose additional regulations on all BOC interLATA affiliates, irrespective of whether it decides to regulate them as dominant carriers, at least as strict as the conditions imposed on MCI in the Order approving the British Telecommunications plc (BT) investment in MCI. There, although the Commission decided not to regulate MCI as a dominant carrier on the U.S.-U.K. route, MCI was required:

to amend all of [its] existing Section 214
certificates stating that [it] shall not accept

special concessions, directly or indirectly, from any foreign carrier or administration with respect to traffic or settlement revenue flows between the United States and any foreign country served.

... to (i) maintain complete records on the provisioning and maintenance of network facilities and services it procures from BT, ... and (ii) make those records available to the Commission upon request.¹³⁸

Moreover, various reporting requirements were imposed on MCI, including the filing "of all contracts, agreements, and arrangements with BT that relate to the routing of traffic and settlement of accounts on the U.S.-U.K. route."¹³⁹

The Commission explained that the prohibited special concessions would include

preferential or exclusive operating agreements or marketing arrangements for the provision of basic telecommunications services, including the introduction and provision of new basic services. Similarly, MCI's amended certificates would preclude it from accepting from BT any distribution or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times, at rates or on terms and conditions that are not available on a nondiscriminatory basis to all competing U.S. carriers.

... Moreover, ... MCI is precluded from bargaining for, or accepting, any preferential changes in the current method used by BT to allocate return traffic among U.S. carriers.¹⁴⁰

¹³⁸ Request of MCI Communications Corporation, British Telecommunications plc, 9 FCC Rcd. 3960, 3973 (1994).

¹³⁹ Id.

¹⁴⁰ Id. at 3967-68.

Given the BOC affiliates' much greater opportunities to exploit their unique situations, as outlined above, restrictions at least as stringent should be imposed on them to safeguard international competition, irrespective of whether an affiliate or its BOC sibling has any affiliation with or investment in a foreign carrier on any particular route. Even where there is no BOC investment in a foreign entity, or vice-versa, the circumstances of the BOC's control of local termination in its region and other characteristics give its affiliate tremendous opportunities to "tilt" the international competitive playing field to its advantage. MCI/BT-type rules are therefore the absolute minimum protections that are necessary to prevent such special arrangements.

CONCLUSION

MCI requests that the Commission promulgate regulations implementing the non-accounting safeguards of Sections 271 and 272 of the Communications Act consistent with the above comments.

Respectfully submitted,

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